

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

DT FASHION LLC,

Plaintiff,

v.

Case No.: 2:15-cv-03020

CHIEF JUDGE EDMUND A. SARGUS, JR.

SANTANA JADE CLINE &
THE DARK MONKEY LLC,

Defendants.

ORDER

This matter came before the Court for a Hearing on Plaintiff DT Fashion LLC's Motion for Preliminary Injunction (ECF No. 3) on November 24, 2015. At the Hearing, the Court **GRANTED** the Preliminary Injunction from the bench, pursuant to the following.

I.

Plaintiff DT Fashion LLC ("DT Fashion") initiated this lawsuit on November 19, 2015 with the filing of a Complaint (ECF No. 1; the "Complaint" or "Compl.") and immediately thereafter moved for injunctive relief (ECF No. 3). DT Fashion is an Ohio limited-liability company that designs, creates and sells apparel focused on humor and satire inspired by topical subjects and popular culture. (Compl. ¶¶ 1, 8.) Defendant Santana Jade Cline ("Cline") is a natural person residing in Dublin, Ohio. (Compl. ¶ 2.) Defendant The Dark Monkey LLC ("The Dark Monkey") is a Nevada limited liability company, incorporated on or about October 30, 2015. (Compl. ¶¶ 3-4.)

DT Fashion argues that Cline and The Dark Monkey (collectively “Defendants”) have schematically caused the deactivation of DT Fashion merchandise from e-commerce site Etsy (Etsy.com) by improperly asserting trademark and copyright violations. (Compl. ¶¶ 8-20.) DT Fashion moves to enjoin Defendants from asserting: (1) that Defendants hold a validly registered federal trademark for the phrase “Merry Christmas Ya Filthy Animal;” and (2) copyright protections under the Digital Millennium Copyright Act 17 U.S.C. § 512.

Defendants were served with notice of the Complaint and the motion for injunctive relief on November 19, 2015 via electronic mail to an address registered with Public Access to Court Electronic Records (“PACER”) on behalf of Cline and used to conduct business on behalf of The Dark Monkey by Cline. (*See* ECF No. 3, Ex. G.) Defendants received notice of the Hearing in the same manner (ECF No. 5). Neither Cline nor The Dark Monkey has made an appearance, contacted the Court or counsel for DT Fashion.

II.

The decision whether or not to issue a preliminary injunction under Rule 65 of the Federal Rules of Civil Procedure falls within the sound discretion of the district court. *Friendship Materials, Inc. v. Michigan Brick, Inc.*, 679 F.2d 100, 102 (6th Cir. 1982). In deciding whether to issue a preliminary injunction the Court must consider “(1) whether the movant has a strong likelihood of success on the merits, (2) whether the movant would suffer irreparable injury absent [relief], (3) whether granting the [relief] would cause substantial harm to others, and (4) whether the public interest would be served by granting the [relief].” *Ne. Ohio Coal. for Homeless & Serv. Emp. Intern. Union, Local 1199*, 467 F.3d 999, 1009 (6th Cir. 2006). “[T]he four considerations applicable to preliminary injunctions are factors to be balanced and not prerequisites that must be satisfied.” *McNeilly v. Land*, 684 F.3d 611, 615 (6th Cir. 2012)

(internal quotations omitted). “These factors simply guide the discretion of the court; they are not meant to be rigid and unbending requirements.” *Id.* (internal quotations omitted). A stronger showing of likelihood of success is required as the other factors militate against granting relief, but less likelihood of success is required when they support granting relief. *Performance Unlimited, Inc. v. Questar Publ’rs, Inc.*, 52 F.3d 1373, 1385–86 (6th Cir. 1995).

As stated on the record during the Hearing, the Court finds that the Rule 65 factors weigh in favor of DT Fashion. Therefore, the Motion for Preliminary Injunction (ECF No. 3) is **GRANTED**.¹ Defendants are hereby **ORDERED to CEASE AND DESIST** from asserting either: (1) that Cline or The Dark Monkey hold either a validly registered federal trademark for the phrase “Merry Christmas Ya Filthy Animal;” or (2) copyright protections under the Digital Millennium Copyright Act 17 U.S.C. § 512. In addition to electronic service via PACER, the Court directs the Clerk to serve Defendants with a copy of this Order via certified mail and regular mail to: Santana Jade Cline, The Dark Monkey LLC, 8243 Chippenham Drive, Dublin, OH 43017. This Order is contingent upon a \$100 bond to be paid by DT Fashion.

IT IS SO ORDERED.

DATE

11-24-2015



EDMUND A. SARGUS, JR.
CHIEF UNITED STATES DISTRICT JUDGE

¹ The Court notes that this Order does not impair any jurisdiction of the U.S. Bankruptcy Court, District of Nevada to adjudicate Case No. 2015-bk-15412 for a Chapter 11 voluntary petition, filed by Cline on or about October 5, 2015.